UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,387	08/15/2003	Mark D. Anderson	RATLP004C3	9477

21005 7590 03/21/2007	EXAMINER
HAMILTON, BROOK, SMITH & REYNOLDS, P.C.	INGBERG, TODD D
530 VIRGINIA ROAD	

	ART UNIT	PAPER NUMBER
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SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
	10/642,387	ANDERSON ET AL.
Office Action Summary	Examiner	Art Unit	
	Todd Ingberg	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>11 December 2006</u>.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>40-75</u> is/are pending in the application.

    4a) Of the above claim(s) <u>1-39</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>40-44, 46-47, 49-63, 67 - 75</u> is/are rejected.

7)☐ Claim(s) <u>45,48 and 64-66</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>15 August 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>12/11/06</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claims 40 - 75 have been examined.

Claims 1 – 39 have been canceled.

Claim 75 have been added.

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2.   Claim 75 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention. It is unclear if the text in the parenthesis is part of the claim or not.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 40 – 44, 46-47, 49-58, 60-61, 67- 75 are rejected under 35 U.S.C. 101 because

the claimed invention is directed to non-statutory subject matter. The current focus of the

Patent Office in regard to statutory inventions under 35 U.S.C. § 101 for method claims and

claims that recite a judicial exception (software) is that the claimed invention recite a

practical application. Practical application can be provided by a physical transformation or a

useful, concrete and tangible result. No physical transformation is recited and additionally,

the final result of the claim is a remote monitor and tangible mediums are present which is

not a tangible result because the result is not clearly and concisely claimed to be storing on

the computer readable medium. The claims have the ability to claimed but not actually

performing the operation. The following link on the World Wide Web is for the United States

Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf>

Under current Office policy an action word (storing, writing, displaying , etc) the result
of the invention to a computer readable medium is needed. See claims 45, 48, 59 and 62.

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible
harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection
is appropriate where the conflicting claims are not identical, but at least one examined
application claim is not patentably distinct from the reference claim(s) because the examined
application claim is either anticipated by, or would have been obvious over, the reference
claim(s). *See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046,
29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum,
686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re
Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).*
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may
be used to overcome an actual or provisional rejection based on a nonstatutory double patenting
ground provided the conflicting application or patent either is shown to be commonly owned
with this application, or claims an invention made as a result of activities undertaken within the
scope of a joint research agreement.
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR
3.73(b).
5.   Claims 54, 56, 57, 58 – 59, 62, 63, 67-70 are rejected on the ground of nonstatutory
obviousness-type double patenting as being unpatentable over claim 1- 5, 7 - 11 of U.S. Patent
No. 6,634,001 B2. Although the conflicting claims are not identical, they are not patentably
distinct from each other because the statutory class of invention differs.

The following is the Mapping of claims

Instant Application	6,634,001
54	1 & 2
56	2

57	3
58	4 & 5
59	4 & 5
62	8
63	7
67	9
68	10 & 11
69	10 & 11
70	5

The claims are scanned in below.

NOTE: Some OCR errors exist in the claims below.

40

A computer program product: for remotely monitoring execution of a computer program, comprising: first computer code that collects data during an execution of a computer program using at least one monitoring instruction, the at least one monitoring instruction being asset incorporated into the computer program, the collected data regarding the execution of the computer program; second computer code that sends the collected data to a remote system such that execution of the computer program is remotely monitored, the collected data being analyzed by the remote system; and a computer readable storage medium that stores the first and second computer codes.

41

The computer program product of claim 40, wherein the computer readable medium is a CR-ROM, floppy disk, tape, flash memory, system memory, or hard drive.

42

The computer program product of claim 40, wherein sending the collected data to the remote system includes automatically sending the collected data to the remote system.

43

The computer program product of claim 40, wherein the at least one monitoring instruction is changed in response to the collected data.

44

The computer program product of claim 40, wherein the first computer code classifies the execution of the computer as normal or abnormal.

45

The computer program product of claim 44, further including saving a call stack in the collected data if the execution of the computer program is classified as abnormal.

46

The computer program product of claim 40, further including allowing a user to customize processing that be performed when the computer program finishes the execution.

47
The computer program product of claim 40, further including generating a symbolic call stack on the remote system so that the computer program may be debugged remotely.

48
The computer program product of claim 40, wherein the computer program is compiled on the remote system, the remote system storing a module map when the computer program is compiled on the remote computer.

49
The computer program product of claim 40, wherein the remote system is adapted for remotely debugging the computer program.

50
The computer program product of claim 40, wherein the second computer code sending sends a. version of the computer program to the remote system during the execution of the computer program.

51
The computer program product of claim 50, further including third computer code that downloads a new version of the computer from the remote system.

52
The computer program product of claim 40, wherein the at least first computer code is incorporated into the computer program.

53
The computer program product of claim 40, wherein the at least one first computer code is linked into the computer program.

54
A computer method of remotely monitoring execution of a computer program, the method comprising the steps of: executing, at a computer system, a computer program including at least one monitoring instruction for collecting data regarding the execution of the computer program; collecting, at the computer system data provided by the at least one monitoring instruction, the collected data regarding the execution of the computer program; and that send the collected data to a remote system such that execution of the computer program is monitored remotely- the data being analyzed at the remote system.

55

The method of claim 54, wherein the computer program is stored to a computer readable; medium at the computer system, the computer readable medium being one of a CD-ROM, floppy disk, tape, flash memory, system memory, and hard drive.

56
The method of claim 54, further comprising the step of automatically sending the collected data to the remote system when the computer program finishes execution.

57
The method of claim 54, further comprising the step of changing the at least one monitoring instruction over the computer program development cycle.

58
The method of claim 54, further comprising the step of classifying the execution of the computer program as normal or abnormal.

59
The method of claim 58, further comprising the step of saving the a call stack in the collected data if the execution of the computer program is classified as abnormal.

60
The method of claim 54, further comprising the step of allowing the a user to customize processing that will be performed when the computer program finishes execution.

61
The method of claim 54, further comprising the step of generating a symbolic call stack [[on]] at the remote system so that the computer program may be debugged remotely.

62
The method of claim 54, on the system and further comprising the steps of compiling the computer program at the remote stem and storing a module map when the at the remote system, the module map being associated with the computer program.

63
The method of claim 62, further comprising the step of storing a call stack and module list when the computer program finishes execution.

64
The method of claim 63, further comprising the step of generating a module name/relative virtual address (RVA) list from the call stack and module list.

65
The method of claim 64, further comprising the step of sending the module name/RVA list to the remote system.

66
, The method of claim 65, further comprising the step of generating a symbolic call stack on the remote system from the module map and the module name/RVA list so that the computer program may be debugged remotely.

67
The method of claim 54, further comprising the step of remotely debugging the computer program.

68
The method of claim 54, further comprising the step of sending a version of the computer program to the remote system during execution of the computer program.

69
The method of claim 68, further comprising the step of downloading a new version of the computer program from the remote system.

70
The method of claim 54, further comprising the step of sending information to a bug tracking application.

71
The method of claim 54, further comprising the step of, for each portion of the computer program designed by a different vendor, collecting data specific to each portion.

72
The method of claim 54, wherein the at least one monitoring instruction specifies a vendor

73
The method of claim 72, further comprising the step of utilizing a Windows hook to intercept a system call invoked by the computer program .

74
The method of claim 54, wherein the at least one monitoring instructions are computer platform independent.

75
A system for monitoring the execution of a computer program, the system comprising:
a program under test (PUT) having first computer code that collects data during an execution of the PUT using at least one monitoring instruction, the collected data regarding the execution; second computer code that sends the collected data to a remote system; and a monitoring program operating at the remote system, the monitoring program receiving and analyzing the collected data such that execution of the PUT is remotely monitored.

Allowable Subject Matter

6.   Claims 45, 48, 64 - 66 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form **including all of the limitations of the base claim and any intervening claims**. Note Claim 64 requires the 101 characteristics of claim 62 and possibly the antecedent basis of claim 63.

Conclusion

7.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
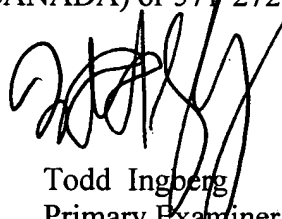
Correspondence Information

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The

examiner can normally be reached on during the work week..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Todd Ingberg
Primary Examiner
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TI